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HIGH COURT OF CHHATTISGARH: BILASPUR

WRIT PETITION NO. 2069 OF 2004

Petitioner:

Itwari s/o. Anand Ram

Versus

Respondents

South Eastern Coalfield Limited and others.

Post for order 20-7-2007

Sd/-
Satish K. Agnihotri
Judge

(91)

HIGH COURT OF CHHATTISGARH: BILASPUR

WRIT PETITION NO. 2069 OF 2004

PETITIONER		Itwari S/o. Anand Ram, aged about 48 years, SDL operator, Banki Main Mines, Banki Mongra, District-Korba, r/o. village Patharri, PO: Korbi, Tahsil Katghora, Distt. Korba (CG).

Versus

RESPONDENTS	1)	South Eastern Coalfield Limited, through its Chairman-cum-Managing Director, Seepat Road, Bilaspur, District – Bilaspur (CG).
	2)	Chief General Manager, South Eastern Coalfield Limited, Korba, District – Korba (CG).
	3)	Deputy Area Manager, South Eastern Coalfields Ltd., Banki Mines No.4, Banki Colliery, Bank Mongra, Distt. Korba,(CG).

(Writ Petition under Article 226 of the Constitution of India)

SB: Hon'ble Mr. Justice Satish K. Agnihotri

Present: Shri P, Diwakar, Sr. Advocate with Shri P.R. Patankar, counsel for the petitioner.

Shri H.B. Agrawal, Sr. Advocate with Shri Pankaj Agrawal, counsel for the respondents.

ORDER
(Passed on 20th July, 2007)

By this petition, the petitioner seeks correction of date of birth in the service record on the basis of Primary School Certificate 1999 (Annexure P/7) and School Transfer Certificate dated 19-12-2003 (Annexure P/6)

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2) The indisputable facts, in nutshell, are that the petitioner was appointed on 1-7-1980 as per menials' service register (Annexure R/4). As per agreement in the year 1980, it was decided that the employer/respondents would prepare a service excerpt giving details of the employee's name, father's name, permanent address, martial status, date of birth and the names of the dependants etc. In the service excerpt, which was prepared in the year 1987, according to learned counsel appearing for the petitioner, the date of birth of the petitioner was wrongly entered as 5-7-1947.

3) The petitioner made a representation (Annexure P/1) stating the fact that he was assured about the correction of his date of birth which was never done. Being aggrieved, the petitioner preferred a writ petition bearing Writ Petition No.80/2004. This Court vide order dated 26-4-2004 (Annexure P/8) held that the case of the petitioner requires to be adjudicated by the Age Determination Committee as constituted under National Coal Wage Agreement III Implementation Instruction No.76 (Annexure P/5). Despite the observations passed by this Court, no decision was taken by the Age Determination Committee within a period of about three months, the petitioner filed the present petition being Writ Petition No.2069 of 2004, seeking correction of his date of birth.

4) The respondents filed the Age Determination Committee's report dated 15-6-2004 stating the date of birth of the petitioner as 1-7-1947 being the correct date of birth. This Court vide order dated 23-4-2007 directed the Age Determination Committee to furnish the reasons for coming to a particular conclusion that the date of birth recorded in Form-

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B is correct. Several opportunities were granted to the respondents to supply the reasons, but the needful was not done.

5) Shri P. Diwakar, learned Sr. counsel with Shri P.R. Patankar, learned counsel appearing for the petitioner would submit that the correct date of birth of the petitioner is 5-7-1956 as per the Primary School Certificate 1999 (Annexure P/7). Secondly, elder brother of the petitioner namely Shyamlal is also working in Sura Kachhar Colliery and his date of birth was recorded as 13-8-1947. He is 13 years senior to the petitioner, on that ground alone, the date of birth of the petitioner recorded in the service book requires correction. Learned counsel would further submit that the petitioner has been representing the authorities since 1988, despite oral assurances given by the authorities, nothing has happened. The petitioner has made a reference of the report of the Age Determination Committee dated 26-5-1988 (Annexure P/6) wherein the date of birth of his elder brother namely Atma Ram was recorded as 17-4-1938 in Form-B and the date of birth of the petitioner was recorded as 1-7-1947.

6) Per contra, Shri H.B. Agrawal, learned Sr. counsel with Shri Pankaj Agrawal, learned counsel appearing for the respondents would submit that the service record (Form-B) retained by the respondents has different figures and in the copy of the service record of the petitioner certain interpolations have been made, therefore, the service record maintained by the employer/respondent is correct. With regard to the averment that his elder brother is 13 years senior when his date of birth was recorded as 1-7-1947, requires proper adjudication by the Civil Court as to whether he was really elder to the petitioner and there was a difference of 13 years between both brothers. Learned counsel

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appearing for the respondents further expresses doubts about the authenticity of the Primary School Certificate, 1999 as the same was issued in the year 1999 and it is no-where stated that as to what was the period of study in the school. It was further contended that the certificate of village Kotwar (Annexure P/4) was also not produced earlier. The said certificate was obtained in the year 2003 under signature of the then Kotwar. School Transfer Certificate dated 19-12-2003 (Annexure P/6) and the Primary School Certificate 1999 were not produced at the time of entry into service and the same were obtained later on which create doubt about the authenticity of the said documents.

7) Having heard learned counsel for the parties, perusing the pleadings and the documents appended thereto, it is evident that the Primary School Certificate, Korba (Annexure P/7) and School Transfer Certificate dated 19-12-2003 (Annexure P/6) have been obtained subsequently. The service excerpt written by the petitioner indicates certain interpolations like in place of date of birth 5-7-1947, it was scored out and "5-7-1956 was written and in place of appointment, 1-7-1980 was scored out and 1-5-1979 was written. There were no initials on the corrections made therein. A copy of the service record available with the employer/respondents indicates the date of birth as 1-7-1947 without any scoring out the date of appointment 1-7-1980, thereafter, it was written 1-5-1979 that was also scored out and 1-7-1980 was written. On the basis of service record, it is difficult to find out what was the correct date of birth recorded in the service record.

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8) Clause (B) (i) (a) of the National Coal Wage Agreement III Implementation Instruction No.76 (Annexure P/5) with regard to review/determination of the date of birth in respect of existing employees reads as under.

> "8) Review/determination of date of birth in respect of existing employees;
> 1) (a) in the case of the existing employees matriculation certificate or Higher Secondary Certificate issued by recognized Universities or Board or Middle pass certificate issued by the Board of Education and/or department of Public Instruction and admit cards issued by the aforesaid bodies should be treated as correct provided they were issued by the said Universities/Boards/Institutions prior to the date of employment".

9) In view of the disputed dates given in the various certificates, it is necessary that the Age Determination Committee should consider all the certificates and other documents to determine the age of the petitioner and pass reasoned order thereof.

10) Despite repeated opportunities given to the respondents, reasons have not been supplied to the Court. The Supreme Court in the matter of **Madhya Pradesh Industries Ltd. vs. Union of India and others**[1] clearly observed that the condition to give reasons introduces clarity and excludes or at any rate minimizes arbitrariness, it gives satisfaction to the party against whom the order is made and it also enables an appellate or supervisory Court to keep the tribunals within bounds. A reasoned order is a desirable condition of judicial disposal.

11) The Supreme Court in the matter of **U.O.I. & others Vs. Jai Prakash Singh and another**[2] observed at para 8 as under:

> "8 Even in respect of administrative orders Lord Denning M.R. in *Breen v. Amal*

[1] AIR 1966 SC 671
[2] 2007 AIR SCW 1692

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> *gamated Engineering Union (1971 (1) All E.R. 1148)* observed "the giving of reasons is one of the fundamentals of good administration". In *Alexander Machinery (Dudley) Ltd. v. Crabtree (1974 LCR 120)* it was observed : "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance".

12) As a result and for the foregoing reasons, this petition is partly allowed. The respondents are directed to refer the dispute to the Age Determination Committee to consider all the facts as stated above and pass a reasoned order with regard to the determination of the age of the petitioner as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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